

Federal Communications Commission JUN 9 3 25 PM '00 FCC 00-204

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
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)
Federal-State Joint Board on)
Universal Service)
)
Universal Service Support for Eligible)
Schools and Libraries)
)
Year 3 Filing Window)

CC Docket No. 96-45

ORDER

Adopted: June 5, 2000

Released: June 8, 2000

By the Commission:

1. In this Order, we direct the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("Administrator") to take certain steps to ensure that applicants for universal service support who attempted to file their FCC Forms 471 online with the Administrator prior to the close of the Year 3 filing window on January 19, 2000, but were unable to do so due to a network server outage, shall have the opportunity to have their applications treated as timely filed. This action is necessary so those applicants who exercised due diligence to file their applications within the filing window are not disadvantaged due to SLD's server failure.

I. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access, and internal connections.¹ The Commission's rules require eligible schools and libraries to seek competitive bids for all services eligible for discounts.² To comply with the competitive bidding requirement, the Commission's rules first require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and lists the services for

¹ 47 C.F.R. §§ 54.502, 503. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8766 (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, reversed in part, and remanded in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*affirming Universal Service Order in part and reversing and remanding on unrelated ground*), *petitions for cert. pending*.

² 47 C.F.R. § 54.504.

which it seeks discounts.³ The Administrator must post the FCC Form 470 to its web site, where all potential service providers can consider it.⁴ Once the FCC Form 470 has been posted for 28 days and the applicant has signed a contract for eligible services with a service provider, the applicant must then submit a completed FCC Form 471 application to notify the Administrator of the services that have been ordered, the service provider with which the applicant has signed a contract, and an estimate of the funds needed to cover the discounted portion of the price of the eligible services.⁵

3. The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁶ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.⁷ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. Applicants may file a completed FCC Form 471 in paper form, or online at the SLD website prior to the close of the filing window. The funding period for the third year of the schools and libraries program will run from July 1, 2000 to June 30, 2001. The filing window for this Year 3 funding period was scheduled by the Administrator to close at 11:59 PM Eastern time on January 19, 2000.

4. On March 13, 2000, the Administrator filed a letter with the Commission indicating that certain applicants for support who attempted to file their Forms 471 online prior to the close of the Year 3 filing window were unable to complete their applications, due to a server failure immediately before the close of the window.⁸ According to the Administrator, at approximately 11:25 PM Eastern time on January 19, 2000, the computer equipment supporting the online application filing process on the SLD Internet site failed, and caused SLD's database to stop serving requests from the Internet site at that time.⁹ Applicants who were in the process of completing their applications on the Internet site at that time lost their connection, and applicants who had previously entered their information and intended to log on to complete their applications prior to the close of the window were unable to do so.¹⁰

³ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁴ 47 C.F.R. § 54.504(b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.507(c).

⁷ 47 C.F.R. § 54.507(g).

⁸ Letter of D. Scott Barash, Vice President and General Counsel, Universal Service Administrative Company, to Magalie Roman Salas, Secretary, FCC (filed March 13, 2000) (*USAC Letter*).

⁹ *USAC Letter* at 2. The Administrator states that SLD's online filing capabilities were significantly enhanced for the Year 3 funding period, but online filing increased four-fold to about 28,000 of more than 36,000 Forms 471, significantly more than anticipated.

¹⁰ *USAC Letter* at 2.

5. The Administrator states that two groups of applications may have been affected by the server failure on January 19, 2000: (1) those that could have been completed on January 19th but were completed on January 20th; and (2) those that could have been completed on January 19th, were not completed on January 20th, but whose applicants informed SLD of their inability to complete their applications due to the inaccessibility of the Internet site.¹¹ The Administrator states that 168 applications fall within the first group, representing a potential pre-discount funding total of \$73.3 million.¹² In the second group, the Administrator states that it has identified 27 applications that were begun before January 20th but were still incomplete as of the end of that date.¹³ Apparently, some of these applications may not have been completed because applicants who called the Administrator's "Help Line" may have received conflicting advice, and some applicants may have been told not to file their applications until they received further instruction from the Administrator. The Administrator suggests that we provide relief to applicants who had 27 or fewer funding requests (FRNs) to complete before the filing window closed, based upon its initial estimate of how many funding requests could be entered in the time period in which the server failed.¹⁴

II. DISCUSSION

6. In this Order, we waive on our own motion the filing window deadline established by the Administrator pursuant to section 54.507(c) of our rules, for certain applicants for universal service support for schools and libraries for the July 1, 2000 – June 30, 2001 funding year.¹⁵ The Commission may waive any provision of its rules on its own motion and for good cause shown.¹⁶ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ Waiver is, therefore, appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁹

¹¹ *USAC Letter* at 3.

¹² *USAC Letter* at 4.

¹³ *USAC Letter* at 4.

¹⁴ *USAC Letter* at 3-4.

¹⁵ Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, allows for waiver of Commission rules if special circumstances warrant deviation from the general rule and such deviation will serve the public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), *cert. denied*, 409 U.S. 1027 (1972).

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *WAIT Radio*, 418 F.2d at 1157.

¹⁹ *Northeast Cellular*, 897 F.2d at 1166.

7. We conclude that special circumstances, namely the unanticipated failure of the Administrator's network server, as well as considerations of potential hardship and equity, justify the waiver of section 54.507(c) of our rules, within the parameters outlined below. We believe that it would be contrary to the public interest if applicants who were prevented from timely filing their FCC Forms 471 due to these circumstances are penalized by having their applications subjected to lesser rules of priority than in-window applications.

8. We direct the Administrator to waive its filing deadline for applicants who would have completed their applications before the close of the January 19, 2000 filing window, but for SLD's server failure. Furthermore, we direct SLD to ensure that all applications that qualify for this waiver are considered in their entirety and are not subject to any limitation on the number of FRNs. We recognize that the Administrator's proposed limitation on the number of funding requests is an attempt to strike a balance between the need to ensure that individual applicants who exercised due diligence to timely file their applications are not disadvantaged due to these circumstances, and the need to ensure that applicants who successfully filed before the close of the filing window are not harmed by allowing applications into the pool of "in-window" funding requests that realistically could not have been completed before the window closed. We do not believe, however, that there is an equitable way to determine how applicants would have proceeded had the server not crashed.²⁰ As a matter of fundamental fairness, we decline to impose any FRN limitations on applicants, and therefore we are compelled to ensure that all applicants who, despite their diligent efforts, were unable to file and complete their applications solely because of SLD's server failure receive full consideration as in-window applicants.

9. Specifically, we conclude that all of the 168 applications that SLD has identified as completed on January 20th shall receive a waiver of section 54.507(c) of the Commission's rules, and their applications shall be treated in their entirety as if they were received within the filing window, regardless of the total number of FRNs submitted. We further conclude that those applicants who did not complete their applications after the server failure, but who had initiated the application process and took steps to inform SLD on or before midnight January 20, 2000 of their inability to access SLD's Internet site to complete their applications on January 19th, shall be allowed to submit their applications within thirty (30) days of the release date of this Order, and be treated as if the application was received within the filing window.²¹ We believe that January 20th represents a reasonable amount of time by which an applicant affected by the server failure should have taken steps to contact SLD. In addition, in some cases, as the

²⁰ For instance, it is possible that an applicant that found itself unable to complete inputting all FRNs before the deadline would elect to submit a truncated application at the deadline to ensure consideration of at least some FRNs.

²¹ We anticipate that the Administrator may easily identify applicants who initiated the online filing process prior to the server failure, if those applicants completed Block 1 of the online FCC Form 471 prior to the server failure, because the Block 1 identifying information would be stored on SLD's database. The Block 1 data is saved once the applicant clicks on the "next" button and enters Block 2. In addition, the Administrator shall verify whether an applicant contacted SLD on or before January 20th. In situations where the Administrator is unable to make such verification, those applicants shall be permitted to certify to the Administrator, with supporting documentation, that they attempted to contact SLD on or before January 20th. We believe that requiring certification in these instances is a reasonable safeguard to ensure that only applicants that were affected by the Administrator's server failure receive a waiver of the filing window requirement.

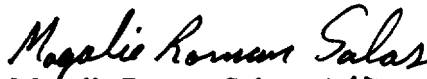
Administrator notes, the applicant may have contacted its state coordinator before, or in lieu of, contacting SLD directly to report its inability to access the server.²² In order not to penalize such applicants who reported their inability to file their applications to their state coordinators, we will allow SLD to obtain certifications from state coordinators regarding which individual applicants contacted them, and on whose behalf those state coordinators contacted SLD on or before midnight of January 20th.

10. We believe that the measures we are directing the Administrator to take in this Order are reasonable and equitable steps that will ensure that all applicants who were potentially harmed by the Administrator's server failure will receive the consideration they would have received but for the server failure. We direct the Administrator, however, to take proactive measures to ensure that, in the future, its online filing capacities are sufficient to handle the demand for online filing, throughout the entire duration of the filing window.

III. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, that the Year 3 filing window deadline established by the Schools and Libraries Division of the Universal Service Administrative Company pursuant to section 54.507(c) of the Commission's rules IS WAIVED for the applicants that meet the standards set forth in this Order, and the Schools and Libraries Division shall take the steps outlined above to effectuate this Order.

FEDERAL COMMUNICATIONS COMMISSION


Magalie Roman Salas W7C
Secretary

²² USAC Letter at 4.